

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DUANE A. KENNEDY,
a Minnesota Attorney,
Registration No. 55128.

**PETITION FOR REVOCATION OF
PROBATION AND FOR FURTHER
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility, and pursuant to this Court's June 19, 2013, order in the matter.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 1, 1976. Respondent currently practices law in Rochester, Minnesota.

INTRODUCTION

By June 19, 2013, order, this Court publicly reprimanded respondent and ordered respondent placed on probation for two years. A copy of the Court's order is attached as Exhibit 1.

Respondent's discipline was based upon having a conflict of interest by representing the defendant in a criminal matter, even though he represented a witness in that matter, resulting in his disqualification from representing the defendant, and failing to inform another client of a settlement offer in a criminal matter unless the client resolved the outstanding attorney fee balance due to respondent, in violation of Rules 1.4(a)(1), (2), and (3), and (b), 1.17(a)(2), 1.9(a), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

Among the conditions of respondent's probation was the following:
"Respondent shall abide by the Minnesota Rules of Professional Conduct."

Respondent has committed the following unprofessional conduct warranting revocation of probation and further public discipline:

FIRST COUNT

1. Stephanie Ann Prose is a former Minnesota juvenile probation officer.
2. Bo Thomas Williams was on probation in 2012 as a result of a prior criminal conviction.
3. In April 2013 Prose was charged in Olmsted County District Court with criminal sexual conduct between her and Williams in violation of Minn. Stat. § 609.344, subdiv. 1(m), and misconduct of a public officer or employee in violation of Minn. Stat. § 609.43(2). Prose was a juvenile probation officer at the time.
4. Williams was under the supervision of Dodge Fillmore Olmsted community corrections.
5. Prose retained attorney Christopher W. Coon to represent her against the criminal charges described above.
6. Williams retained respondent to pursue a civil claim against Prose.
7. On July 12, 2013, respondent faxed a letter to Coon (Exhibit 2) stating he was representing Williams. Respondent wrote in part, "The only good resolution for Ms. Prose is a dismissal, where she has a right to expungement. I demand settlement for \$300,000.00." Respondent asked Coon to "move promptly" if Prose was interested in respondent's offer. Coon did not respond to respondent's letter.
8. On July 17, 2013, respondent faxed another letter to Coon (Exhibit 3). Respondent reminded Coon of respondent's offer, and that accepting it "could result in dismissal of the criminal complaint against Ms. Prose, with a right of expungement." Coon did not respond to respondent's letter, but submitted a copy of it and respondent's July 12, 2013, letter to the Director's Office along with a complaint against respondent.

9. On July 29, 2013, respondent faxed another letter to Coon (Exhibit 4). This was after complaints were received about this matter by the Director, but before respondent received notice of the investigation. Respondent wrote in part as follows:

If Mr. Williams can settle with Ms. Prose, he may decide to ask the prosecutor to dismiss, and he may decide to not testify against her. In that event, she would not be convicted and could acquire expungement.

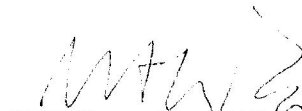
10. Coon did not respond to respondent's July 29, 2013, letter.

11. On September 10, 2013, Prose pled guilty to misconduct of a public officer or employee, a gross misdemeanor. The criminal sexual conduct charge was dismissed.

12. Respondent's conduct violated Rule 8.4(a) and (d), MRPC, and the probation order.

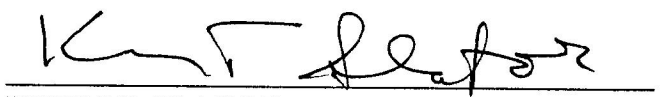
WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, suspending respondent's license to practice law or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: Feb. 27, 2014.



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